The Herrenvolk-Franchise Elective Dictatorship

A Structural Taxonomy of the English Constitutional State

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Abstract

This paper proposes and defends a precise constitutional classification of the English state: the Herrenvolk-Franchise Elective Dictatorship, or H-FED. The classification is constructed from three independently verifiable layers, each grounded in primary source evidence and, in two of three cases, sourced from within the English constitutional tradition itself. The first layer, Herrenvolk-Franchise, applies and extends Pierre van den Berghe's established political science concept of herrenvolk-democracy to the English state, making two deliberate analytical refinements: first, from racial to national dominion; second, and critically, from democracy to franchise. The primary record establishes that not even the dominant nation held popular sovereignty, only the right to participate in the ritual of selecting those who exercise unlimited power. The second layer, the Elective element, identifies the English parliamentary tradition not as a people's instrument but as an unbroken record of elite corporate capture, predating formal parliamentary organisation and crystallised in institutional form from 1265. The third layer, the Dictatorship element, is sourced from a self-indictment produced by the English constitutional tradition itself: Lord Hailsham's 1976 identification of Westminster as an 'elective dictatorship', structurally completed by the Parliament Act 1911. The three layers combine to produce a classification that has been fully operative since 1911. The paper employs a Mechanic Audit methodology, separating the structural hardware of the English constitution from the narrative layers through which that hardware has been presented as democratic evolution. The paper does not advance a political argument. It performs a taxonomic audit. The constitutional implications of that audit, including its effect on any claims of procedural authority derived from the English constitutional tradition, are identified in the conclusion.

Keywords: constitutional classification; herrenvolk-franchise; parliamentary sovereignty; elective dictatorship; elite capture; franchise without sovereignty; English constitutional history; mechanic audit

I. Introduction

The question of what kind of constitutional system Westminster represents has rarely been posed in structural terms. The dominant narrative — that the United Kingdom operates a mature, if imperfect, parliamentary democracy — has been accepted as the framework within which constitutional debates are conducted. This paper challenges that framework at its foundations.

The challenge is not political. It is taxonomic. The claim advanced is that when the English state's constitutional architecture is examined systematically, against its own primary record and its own scholars' analyses, it does not satisfy the criteria for democracy in any principled sense. It satisfies the criteria for a different and precisely nameable constitutional category: the Herrenvolk-Franchise Elective Dictatorship, H-FED.

The classification is built from three independently verifiable components. Each component rests on primary source evidence. Two of the three are sourced from self-indictments produced within the English constitutional tradition itself. The combination of all three in a single, simultaneously operative constitutional architecture is, on the available comparative evidence, unique to the English state.

The paper's methodology is what is termed here a Mechanic Audit: a cold structural analysis of constitutional hardware, conducted independently of the social contract narrative through which that hardware has historically been presented. The post-war Keynesian settlement — the National Health Service, full employment policy, collective bargaining, the welfare state — forms part of that narrative. These instruments altered the experience of living within the English constitutional system; they did not alter the system's structural architecture. The task of this paper is to audit the architecture, not the experience of living within it. The distinction between the two is, this paper argues, the central confusion in existing discourse about whether Westminster constitutes a functioning democracy.

The paper proceeds as follows. Section II sets out the Mechanic Audit methodology, its evidential standards, and the two analytical extensions the H-FED classification makes to the existing herrenvolk-democracy literature. Section III surveys the existing scholarship within which the H-FED classification must be situated, identifying the gap it fills. Sections IV, V and VI analyse each of the three layers in turn: the Herrenvolk-Franchise element, the Elective element, and the Dictatorship element. Section VII presents the synthesis: the three components as a combined constitutional architecture, operative simultaneously and continuously from 1911. Section VIII addresses the principal counter-arguments. Section IX draws the constitutional implications, including contemporary primary record confirmation of the classification in post-2016 constitutional events. Section X concludes.

II. Methodology: The Mechanic Audit Protocol

2.1 The Core Distinction

The central methodological principle of this paper is the distinction between constitutional hardware and narrative layer. Constitutional hardware designates the structural architecture of a political system: its foundational instruments, its sovereignty arrangements, its internal checks and balances, the legal framework governing the relationship between state power and those subject to it. A narrative layer designates the account through which that architecture is publicly presented and historically understood.

The two are not the same. A constitutional system may possess a hardware architecture that operates through mechanisms of elite capture and hierarchical dominion whilst maintaining a narrative layer that presents it as an evolving democratic partnership. The task of a mechanic audit is to assess the hardware on its own terms, using primary evidence, without allowing the narrative layer to contaminate the analysis.

This is not a novel methodological position. It is the routine procedure of structural constitutional analysis. What is perhaps less routine is its application to the English state, which has accumulated a particularly robust narrative layer, one that has been reproduced across centuries of institutional authority, legal

scholarship, and popular discourse. This paper does not contest the existence of that narrative layer. It simply audits the hardware beneath it.

2.2 Evidential Standards

The paper applies a three-tier evidential standard throughout. Primary evidence, direct primary sources read and verified: primary legislation, case law, parliamentary records, official correspondence, and published primary documents, represents the highest tier and carries full analytical weight. Secondary inference — analysis applied to primary data, high confidence — is used where the primary record supports a structural conclusion but the conclusion itself requires analytical extension. Working hypothesis — plausible and consistent with evidence, not yet fully tested — is named explicitly where used and is excluded from the paper's principal conclusions.

The paper relies, where possible, on primary sources produced within the English constitutional tradition itself. This is not merely methodological preference. It is structural: a classification derived from a system's own self-indictments is considerably more resistant to the objection that it represents an external imposition of analytical categories.

2.3 Two Analytical Extensions: From Herrenvolk-Democracy to Herrenvolk-Franchise

The H-FED classification departs from van den Berghe's original herrenvolk-democracy concept in two deliberate and independently warranted directions. Both departures are extensions of the concept's core logic, not contradictions of it. Both are grounded in the primary evidence rather than in preference.

Extension one: from racial to national dominion. Van den Berghe's herrenvolk-democracy concept was developed in the specific context of racially stratified settler societies, principally apartheid South Africa and the pre-Civil Rights American South.[1] Its application in this paper to national rather than strictly racial dominion is a deliberate analytical extension. The structural parallel holds precisely: the mechanism through which the dominant group's political will is exercised over subject peoples is the same whether the distinguishing criterion is racial or national. The racial element present in the original literature is absent from the H-FED classification. That distinction is named explicitly here, in advance, to remove the most predictable line of challenge to the classification in formal deployment.

Extension two: from democracy to franchise. This is the more significant departure, and the one that makes the H-FED classification analytically stronger than a direct application of van den Berghe's terminology to the English case. Van den Berghe's herrenvolk-democracy described a system in which the dominant group genuinely held democratic self-governance, real popular sovereignty, real electoral accountability, real constitutional power flowing from the people of the dominant group. The 'democracy' in his formulation was descriptively accurate for the in-group in the American South and apartheid South Africa.

The primary record of the English state does not support this description even for the dominant nation. The doctrine of parliamentary sovereignty, as articulated by Dicey and operative continuously through the English constitutional tradition, locates sovereignty not in the English people but in the Crown-in-Parliament.[2] The English people have never held popular sovereignty. They have held the franchise: the right to participate in the selection of those who exercise unlimited parliamentary power on their behalf. The sovereignty never transferred. What the English people received, as the dominant nation in the H-FED structure, was not democratic power but preferential status, the psychological and political wage of national dominance, combined with the franchise ritual that authenticates the institution without constituting popular self-governance.

The 5,200 Enclosure Acts passed between 1604 and 1914 are the receipts of this distinction made visible

[1] Pierre L van den Berghe, *Race and Racism: A Comparative Perspective* (John Wiley & Sons 1967); George M Fredrickson, *White Supremacy: A Comparative Study in American and South African History* (Oxford University Press 1981).

[2] AV Dicey, *Introduction to the Study of the Law of the Constitution* (1st edn, Macmillan 1885).

in statute.[3] Each Act was passed by a parliament in which the propertied classes sat in judgement on their own interests, transferring common land from the communities that had worked it for centuries into private ownership. The people whose land was enclosed were not the democratic masters. They were assets being managed by those who held the franchise above them, in a constitutional architecture that placed no popular sovereignty between the encloser and the enclosed.

The word 'franchise' names this mechanic precisely. It denotes the right to participate in the selection ritual without the transfer of sovereignty. It is what the English people have actually held throughout the constitutional history this paper audits. Deploying 'democracy' in the classification would reproduce the narrative layer as if it were the hardware. The receipts do not support it.

This analytical extension has consequences for the literature. Van den Berghe's insight, that democratic forms and colonial hierarchy are not in tension but mutually reinforcing, is preserved and deepened. The H-FED classification shows that the mechanism goes further than van den Berghe identified: not only does the dominant group's franchise sustain hierarchical dominion over subject peoples, but the franchise itself is deployed to prevent the dominant group from exercising genuine sovereignty over the extraction engine that manages them. Section 4.2 develops the structural mechanism by which this dual operation is maintained.

III. Literature Review: The Gap H-FED Fills

3.1 The Herrenvolk-Democracy Tradition and Its Limits

The concept of herrenvolk-democracy was introduced into comparative political science by Pierre van den Berghe in 1967 and substantially extended by George Fredrickson in 1981.[4] Both scholars applied the concept rigorously to racial stratification in settler colonial societies. The core insight is that democratic institutions and colonial hierarchy are not in tension, they can operate as mutually reinforcing mechanisms within a single political system, with democratic franchise serving the dominant group as the instrument through which hierarchical control over subject populations is maintained and legitimised.

This literature has not, to this author's knowledge, been systematically applied to the English state's relationship with its incorporated nations and its own population. The present paper makes that application explicit, bounded, and evidentially grounded, and in doing so identifies a structural feature of the English case that requires the concept's refinement. In the American South and apartheid South Africa that van den Berghe and Fredrickson analysed, the dominant white population held genuine democratic self-governance: real franchise, real electoral accountability, real popular sovereignty within the dominant group. The H-FED classification establishes that the English case lacks this feature. The dominant nation was granted franchise, the ritual of selection, but not sovereignty. The Crown-in-Parliament retained sovereignty. This makes the English case more, not less, extreme than the original herrenvolk-democracy model: the dominant group itself was denied the democratic foundation that van den Berghe's concept presupposed.

3.2 The Elective Dictatorship Tradition

The concept of elective dictatorship was identified and named from within the English constitutional tradition itself by Lord Hailsham in his 1976 Richard Dimbleby Lecture and codified in his subsequent work *The Dilemma of Democracy*.[5] Hailsham's analysis was directed principally at the structural consequences of the Parliament Act 1911: unlimited parliamentary sovereignty with a democratic veneer, no codified constitution, no external constitutional check.

Hailsham's formulation has been extensively discussed in constitutional scholarship but has rarely been connected to the broader herrenvolk-democracy literature. This paper makes that connection explicit:

[3] House of Commons Library, Enclosure Acts briefing — 5,200 individual Acts confirmed.

[4] van den Berghe (n 1); Fredrickson (n 1).

[5] Lord Hailsham (Quintin Hogg), Richard Dimbleby Lecture (BBC, 1976); Lord Hailsham, *The Dilemma of Democracy* (Collins 1978).

the elective dictatorship structure Hailsham identified is the mechanism through which the dominant nation's franchise-authenticated will is exercised over incorporated subject peoples and the dominant nation's own population without constitutional constraint.

3.3 Parliamentary Sovereignty and Its Limits

The orthodox English constitutional position, that parliamentary sovereignty is unlimited and absolute, has faced increasing academic pressure. Three Law Lords noted in *obiter* in *R (Jackson) v Attorney General* [2005] that parliamentary sovereignty may be a common law construct capable of judicial limitation.[6] Lord Cooper identified in *obiter* in *MacCormick v Lord Advocate* [1953] that the doctrine of unlimited parliamentary sovereignty is 'a distinctively English principle which has no counterpart in Scottish constitutional law.'[7] Neither observation constitutes binding precedent, but together they confirm that the absolute status of parliamentary sovereignty is not constitutionally settled even within the tradition that asserts it.

3.4 The Continuator State Analysis

Professor Robert Black KC FRSE, Emeritus Professor of Scots Law at the University of Edinburgh, delivered a foundational legal analysis in 2025 establishing that the events of 1707 did not create a new state but extended the English state over Scotland: 'The evidence supports no judgment other than that Scotland ceased to exist as a state in international law and was absorbed into a still extant England.'[8]

Black's analysis confirms the H-FED classification's foundational premise: the modern Westminster system is the continuator of the English state, not a reformed or reconstituted entity. The constitutional hardware of the English state was not remade. It was scaled.

3.5 Crawford & Boyle and the Counter-Scholarship

The UK Government commissioned Crawford and Boyle in 2013 to advance the legal position that England is the continuator state and any territory departing from it constitutes a new state in international law.[9] This secondary legal opinion applied to the primary treaty text has attracted substantial named scholarly challenge. Carty and Clyde, in a peer-reviewed counter-analysis published in the *London Review of International Law*, argue that the 1707 Treaty is better understood as a composite state arrangement between two kingdoms of equal standing, capable of equal separation.[10] Ian Campbell CMG, writing in the *Journal of the Law Society of Scotland*, described key elements of Crawford and

Boyle's analysis as 'flawed' and 'untenable', noting that the opinion 'put forward no evidence' for its foundational assertion that the Scottish Crown ceased to exist in its distinct capacity in 1707.[11]

Both Crawford and Boyle's opinion and the counter-scholarship represent secondary legal analysis applied to primary treaty text. Where they conflict, the primary treaty text governs. The significance for this paper is that the dominant legal opinion deployed to manage constitutional challenges to the English state was itself produced by an institution whose constitutional character is the subject of this paper's classification. That circularity is not incidental. It is structural.

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[6] *R (Jackson) v Attorney General* [2005] UKHL 56; [2006] 1 AC 262, per Lord Steyn at [102], Lord Hope at [104]–[107], Baroness Hale at [159].

[7] *MacCormick v Lord Advocate* [1953] SC 396, per Lord President Cooper (*obiter*).

[8] Robert Black KC FRSE, '*For England, Nothing Changed*' (paper delivered at 'The Next Steps for Scottish Sovereignty' conference, Dunfermline, 17 May 2025) https://liberation.scot/coms/June18-2025/For-England-Nothing-Changed-Professor-R.Black-KC.pdf accessed 21 April 2026.

[9] James Crawford SC and Alan Boyle, 'Opinion: Referendum on the Independence of Scotland — International Law Aspects', Annex A to *Scotland Analysis: Devolution and the Implications of Scottish Independence* (UK Government, February 2013).

[10] Anthony Carty and Mairianna Clyde, 'Scotland and England from a union of parliaments to two independent kingdoms' (2014) 2(2) *London Review of International Law* 299 (DOI: 10.1093/lril/lru007).

[11] Ian Campbell CMG, ' "The Union and the law" revisited' (2014) *Journal of the Law Society of Scotland* (Vol 59, Issue 07) https://www.lawscot.org.uk/members/journal/issues/vol-59-issue-07/the-union-and-the-law-revisited/ accessed 21 April 2026.

3.6 The Gap

What the existing literature has not produced is a unified constitutional classification that combines the herrenvolk tradition with the specific English refinement, franchise without sovereignty for even the dominant group, the elective dictatorship analysis, and the elite capture history of the English parliamentary tradition, into a single evidentially grounded taxonomy. That is the gap this paper addresses.

IV. Layer One — The Herrenvolk-Franchise Element

4.1 Definition and Application

The Herrenvolk-Franchise layer identifies a constitutional system that maintains the ritual of franchise for the dominant national group whilst simultaneously exercising hierarchical dominion over incorporated subject peoples, and, crucially, without at any point transferring genuine popular sovereignty to either the dominant group or the subject peoples. The franchise authenticates the institution. It does not constitute popular self-governance.

The distinction between franchise and democracy is the analytical foundation of this layer. Democracy, in the principled sense, requires that sovereignty resides in the people, that governmental power is loaned conditionally by the people to those who exercise it, on terms the people can enforce and revoke. Franchise, as deployed in the English constitutional tradition, requires only that the people participate in the periodic selection of those who then exercise unlimited power without constitutional constraint. The people vote. The institution governs. The sovereignty never transfers.

This is not a novel observation about the English constitutional tradition. It is what Lord Cooper confirmed in *obiter* in *MacCormick v Lord Advocate* [1953]: the doctrine of unlimited parliamentary sovereignty is 'a distinctively English principle which has no counterpart in Scottish constitutional law.'[12] It is what the doctrine of the Crown-in-Parliament has always stated: sovereignty resides in the institution, not the people. The franchise was expanded over centuries through sustained popular struggle. The sovereignty model was never changed. The dominant group received preferential status, not sovereignty. They received the franchise, not the farm.

The English state has maintained, across the full span of its institutional history, the franchise ritual for England whilst exercising dominion over incorporated nations — Ireland from 1169, Wales from 1267, and thereafter — whose populations' expressed preferences have been systematically overridden through the exercise of the franchise-authenticated parliamentary will. The franchise has not been the solution to this hierarchical structure. It has been its mechanism of authentication. The dominant group's ritual participation launders the institution's unlimited power as a popular mandate for actions the dominant group itself could not constitutionally constrain.

4.2 The Lateral Buffer: Managing the Dominant Group's Franchise

The lateral buffer is the structural mechanism through which the dominant group's franchise is managed to prevent it from becoming a vehicle for vertical challenge to the extraction architecture. By granting the English psyche the psychological wage of national dominance — the colonial mask of empire, flag, crown, and the sense of civilisational superiority relative to incorporated subject peoples — the system directs the dominant group's political energy horizontally, toward the subject nations, rather than vertically, toward the Crown-in-Parliament and the financial architecture it protects.

The mechanism is named within the English tradition itself. J.A. Hobson, writing in 1902, analysed imperial expansion as the instrument through which surplus capital and unresolved domestic pressures for reform were displaced outward rather than addressed at home: the imperial project functioned to defer the social question that would otherwise have required redistribution within England itself.[13] Hobson's account was structural analysis from within English political economy. He was not arguing that

[12] *MacCormick v Lord Advocate* [1953] SC 396, per Lord President Cooper (*obiter*).

[13] J A Hobson, *Imperialism: A Study* (James Nisbet & Co 1902), particularly Chapter VI 'The Economic Taproot of Imperialism', analysing imperial expansion as the displacement of surplus capital and deferred domestic reform pressure.

the imperial mechanism was morally acceptable or functionally necessary; he was identifying how it operated. The H-FED classification names this same mechanism in constitutional rather than economic register: the lateral buffer directs the dominant group's political energy outward toward subject nations and imperial identity, absorbing what would otherwise have become vertical pressure on the extraction architecture at home. The same mechanism Hobson identified in economic register operates in psychological register on the dominant nation's own population: the franchise-authenticated parliament's authority is internalised as natural rather than questioned as legitimate.

The 5,200 Enclosure Acts are the receipts of this mechanism in primary legislative record.[14] Each Act transferred common land from the communities that had worked it for centuries into private ownership, passed by a parliament in which the enclosers sat in judgement on their own interests. The English commoner did not hold the farm. The English commoner was managed on it, granted the franchise, denied the sovereignty, given the identity of the dominant nation as substitute for the common rights being extinguished. The lateral buffer kept them looking sideways at subject peoples rather than vertically at the architecture removing their commons.

This is the Herrenvolk-Franchise mechanism operating on both axes simultaneously: dominion over subject peoples through the franchise-authenticated parliamentary will, and management of the dominant group's franchise to prevent genuine popular sovereignty challenging the extraction architecture. Neither the subject peoples nor the dominant group's commoners held the sovereignty. The Crown-in-Parliament held it. It holds it still.

4.3 The Origin of Dominion: Ireland 1169

The operative date for the Herrenvolk-Franchise component is 1169, when the invasion of Ireland commenced under Anglo-Norman lords, principally Strongbow and the Cambro-Norman magnates, establishing the beginning of a continuous English claim to dominion over Irish territory and its population.[15] Henry II's intervention and landing in Ireland in 1171–1172 formalised that claim under royal authority: Irish kings submitted to English rule as external overlords, not as participants in a voluntary constitutional arrangement.

The structural significance of 1169 for the H-FED classification is that it establishes the dominion component of the Herrenvolk-Franchise layer at the precise moment when England's internal governance was operating through the elite consultative mechanisms — the Witenagemot's Norman successor, the Great Council — that are the direct precursors of the parliamentary franchise tradition described in Layer Two. The dominion preceded the parliamentary form. The parliamentary form was constructed alongside and in partial service of the dominion. England began exercising hierarchical dominion over subject peoples before it had a parliament to authenticate that dominion. When the franchise ritual was constructed, it was constructed on top of a dominion already in operation.

4.4 Wales 1267

In 1267, the Treaty of Montgomery established English suzerainty over Llywelyn ap Gruffudd, formally acknowledged by Henry III as Prince of Wales under English overlordship.[16] This is the formal constitutional moment at which England established its dominion over Wales in treaty record. England subsequently extended that dominion through military conquest under Edward I (1277–1283), statutory annexation (Statute of Rhuddlan 1284), and the legislative codification of three centuries of already-operative subjugation by the Laws in Wales Acts 1535–1542, enacted by a parliament in which Wales had no representation.

The 1535–1542 Acts are frequently cited as the operative date of England's dominion over Wales. This paper argues they are better understood as the statutory codification of a subjugation already three centuries old, not its establishment. The codification does not mark the beginning of the dominion. It marks

[14] House of Commons Library, Enclosure Acts briefing — 5,200 individual Acts confirmed, 1604–1914.

[15] Anglo-Norman invasion of Ireland, 1169 — primary historical record.

[16] Treaty of Montgomery 1267 — primary historical record.

the point at which the franchise-authenticated parliament wrote three centuries of established fact into statute.

4.5 The Mechanics of Annexation: The 1707 Incorporation

The incorporation of Scotland in 1707 provides the most extensively documented primary record of the Herrenvolk-Franchise mechanism in operation. Three distinct instruments were deployed.

Statutory economic compulsion. England's Alien Act 1705 restricted Scottish trade with England and its colonies and threatened to treat Scots as foreign nationals unless treaty proceedings commenced by a specified deadline.[17] This was economic warfare deployed by parliamentary statute against a sovereign legislature. The threat was explicit, the mechanism was legislative, and its purpose was to force treaty proceedings from a position of English economic dominance. England's political leadership deployed the franchise-authenticated parliament as a weapon of compulsion against a sovereign people.

Fiscal inducement of the legislative body. Individual financial inducements to Scottish parliamentarians are recorded in period pamphlets, secret-service accounts, and post-ratification parliamentary record. A specific payment of £12,000 to the Duke of Queensberry is cited in secret-service records and in George Lockhart of Carnwath's contemporary memoirs.[18] Total estimates across the parliamentary body range from £20,000 to £30,000 in pensions, titles, and monetary equivalents. The precise characterisation of individual payments, between legitimate arrears of pension and inducement, has been contested in subsequent historiography; the existence of the coordinated inducement structure, encompassing pensions, titles, the Equivalent settlement, and post-ratification appointments, is primary record. Its decisive causal weight is secondary historiographical inference.

Military context. The ratification vote of 110 to 67 was preceded by documented public opposition: over eighty anti-incorporation petitions carrying more than 20,000 signatures from shires, burghs, and presbyteries reached the Scottish Parliament, accompanied by riots in Edinburgh, Glasgow, Dumfries, and Stirling.[19] The backdrop of military pressure, English forces positioned at the border, was contemporaneously noted by participants.

4.6 The Self-Indictments: Crown Agents Name the Mechanic

The most powerful evidence for the Herrenvolk-Franchise classification derives from sources produced within the English Crown's own apparatus at the moment of the 1707 incorporation.

William Atwood, Crown-appointed legal writer, published *The Superiority and Direct Dominion of the Imperial Crown of England Over the Crown and Kingdom of Scotland* in 1704, three years before the Articles of Union were drafted.[20] Atwood established English dominion over Scotland as constitutional premise, not consequence. The conclusion preceded the instrument. The Scottish Parliament ordered the work burned by the common hangman at the Market Cross in Edinburgh in August 1705.

Daniel Defoe, Crown intelligence agent operating in Edinburgh under instruction from Secretary of State Robert Harley, reported to Harley in private operational correspondence throughout 1706 on the mechanics of securing the Treaty's passage.[21] Defoe's framing throughout describes the operation in terms of

[17] Act of Settlement 1701, 12 & 13 Will 3 c 2 (Parliament of England) Alien Act 1705 (Parliament of England) — primary statutory record.

[18] The £12,000 payment to the Duke of Queensberry is documented in Historical Manuscripts Commission, *Manuscripts of His Grace the Duke of Portland*, Vol IV (London, HM Stationery Office 1897), drawing on the surviving secret-service accounts of the period. The broader inducement structure is recorded contemporaneously by George Lockhart of Carnwath, a member of the Scottish Parliament during the ratification process, in his *Memoirs Concerning the Affairs of Scotland from Queen Anne's Accession to the Throne* (London 1714).

[19] Records of the Parliaments of Scotland to 1707, K M Brown et al (eds) (St Andrews 2007–2026), 1706/10/257 — division list 16 January 1707; petition record cross-verified against National Records of Scotland RH18/4/14.

[20] William Atwood, *The Superiority and Direct Dominion of the Imperial Crown of England Over the Crown and Kingdom of Scotland* (London 1704) — available via Early English Books Online, British Library.

[21] *Manuscripts of His Grace the Duke of Portland*, Historical Manuscripts Commission Report, Vol IV (London, HM Stationery Office 1897), pp 345–6, 350, 351–2 and passim; *The Letters of Daniel Defoe*, ed George Harris Healey (Oxford,

subjugation and annexation rather than of partnership between equals. These were private operational communications between a Crown intelligence agent and the English Secretary of State. The framing deployed by Defoe to his employer was the framing of a dominion being secured, not of a voluntary union being negotiated.

Robert Harley, as English Secretary of State and subsequently First Minister of England, was the instigator and recipient of Defoe's operational correspondence. The Portland MSS record him not as a distant constitutional observer but as the directing officer of the covert intelligence operation through which the Treaty's passage was secured. That the English Crown's senior political officer was personally directing an intelligence operation inside the Scottish Parliament during treaty proceedings is, on the face of the primary record, inconsistent with the later characterisation of 1707 as a voluntary constitutional union between equals.

These self-indictments were produced by the English Crown's own agents, for the English Crown's own purposes, in private communications never intended for Scottish or public audiences. They require no interpretive gloss.

4.7 Acts of Affirmation and the Pattern of Simultaneous Acknowledgement and Override

The Herrenvolk-Franchise component is confirmed by a pattern extending across the full span of English conduct toward the incorporated nations, a pattern in which England simultaneously acknowledges the sovereignty of the subject people and overrides it. The instruments through which England made these acknowledgements constitute, in evidentiary terms, Acts of Affirmation: legislative or treaty instruments in which the English Crown explicitly affirmed that Scotland possessed sovereign rights requiring formal acknowledgement before England could assert its subsequent claims. Each Act of Affirmation is an admission against interest. At the moment of affirmation, the English Crown acknowledged that the sovereignty it later claimed to exercise was not, at that moment, English to dispose of.

In 1290, England negotiated and signed the Treaty of Birgham preserving Scottish independence as a non-negotiable condition.[22] In 1291–1292, Edward I positioned himself as external arbiter of the Scottish succession rather than as internal overlord issuing a command.[23] In 1328, England formally conceded its claim to the Kingdom of the Realm of Scots.[24] In each case, the act of acknowledgement is, structurally, the confession: a sovereign power does not negotiate the preservation of a sovereignty it already holds; does not arbitrate the succession of its own internal affairs; does not concede a claim it legitimately held. The structural implication of these primary events is that sovereignty affirmed by treaty cannot be legitimately extinguished by force. The Edwardian conquests that followed each affirmation suppressed that sovereignty; they did not transfer it. An expression of sovereignty suppressed is not an expression of sovereignty extinguished.

In 1603, England accepted James VI of Scotland on joint constitutional terms, in direct contravention of Henry VIII's Act of Succession 1544, which had explicitly barred the Scottish descendants of his sister Margaret Tudor from the English throne.[25] The Act was never repealed. England proceeded without any legal instrument to authorise the override. The subsequent 1604 Union Commission discussions treated the arrangement as one between two distinct sovereign entities united only in the person of the monarch, not as a single constitutional state.[26] Francis Bacon, writing as Solicitor General, addressed the legal status of the proposed 'Great Britain' title in his published speeches on post-nati naturalisation; the title could not operate in legal instruments without statutory foundation that the 1604 Parliament had

Clarendon Press 1955).

[22] Treaty of Birgham 1290 — primary historical record.

[23] The Great Cause 1291–1292 — primary historical record.

[24] Treaty of Edinburgh-Northampton 1328 — primary historical record.

[25] Succession to the Crown Act 1544 — primary statutory record.

[26] 1604 Union Commission proceedings, contemporary legal and parliamentary record. See generally Brian P Levack, *The Formation of the British State: England, Scotland, and the Union 1603–1707* (Oxford: Clarendon Press 1987), which documents the 1604 Commission's treatment of the Crown as uniting two sovereign states rather than constituting a single polity.

not provided.[27]

In 1650–1660, England had to legislate to absorb Scotland — the Tender of Union 1652, the Ordinance for Union 1654 — and then had to formally dissolve that legislation in 1660 because Scottish sovereignty, never legitimately extinguished, reasserted itself.[28] If it had been legitimately transferred, no dissolution would have been necessary or possible.

England does not perform respect for a right it intends to honour. It performs respect for a right it intends to override. This is the Herrenvolk-Franchise mechanism operating continuously: the dominant nation's franchise-authenticated parliamentary will determining the constitutional fate of subject peoples whilst maintaining the appearance of consent throughout.

V. Layer Two — The Elective Element

5.1 The Claim and Its Central Objection

The Elective component of the H-FED classification rests on a proposition that is historically verifiable but runs counter to the dominant narrative of English constitutional development: that England has never had a people's parliament. The franchise widened over centuries through sustained popular struggle. The underlying sovereignty model, in which sovereignty resides in the institution of the Crown-in-Parliament rather than in the people, never changed.

The central objection to this claim is that the very existence of parliamentary elections, the gradual extension of the franchise, and the passage of landmark social legislation constitute evidence of genuine democratic character. This paper does not dispute any of these facts. It disputes the inference drawn from them. The existence of elections and an expanding franchise does not, in itself, constitute popular sovereignty. The question is where sovereignty formally resides and whether the people's electoral choices constrain or transfer that sovereignty. In the English constitutional tradition, they do neither.

5.2 The Deep Structure: Elite Governance Before Parliament

Elite governance as the foundational operating principle of England's political structure predates the parliamentary tradition by centuries. The Anglo-Saxon Witenagemot — the assembly of *witan*, or wise men, comprising nobles, senior clergy, and the king's household officers — was the primary governance mechanism of pre-conquest England.[29] It was not a representative body in any modern democratic sense. It was a consultative assembly of the propertied and ordained, convened at the Crown's pleasure, advising on matters of war, succession, and legislation for the benefit of the class it comprised.

The Norman Conquest of 1066 did not displace this model. It replaced one elite with another whilst preserving the structural principle: governance through the consultation of those whose material interests were bound up in the governance of the territory. William I's Great Council, the direct institutional successor to the Witenagemot under new Norman personnel, continued the practice of elite consultation as the mechanism of legitimate rule. The appearance of the institution changed. The class interests it served and the sovereignty model it embodied did not.

Magna Carta 1215, frequently cited as a foundational document of English constitutional liberty, is more precisely understood as an elite instrument.[30] The barons who extracted concessions from King John were not acting as agents of the English people. They were protecting their own property rights, their own legal standing, and their own political position against an overreaching Crown. The clauses of

[27] Francis Bacon, *Three Speeches Concerning the Post-Nati Naturalization of the Scotch in England, Union of the Lawes of the Kingdomes of England and Scotland* (as Solicitor General), EEBO ref: A71317.0001.001, University of Michigan. For the constitutional implications of Bacon's analysis of the Great Britain title, see Levack, The Formation of the British State (n 25), chapters 2–3.

[28] Tender of Union 1652; Ordinance for Union 1654; Rescissory Act 1661 (Parliament of Scotland) — primary statutory record.

[29] Anglo-Saxon Witenagemot — primary historical and chronicle record.

[30] Magna Carta 1215 — primary document.

Magna Carta that addressed individual liberty were principally concerned with the rights of free men, a category that in 1215 excluded the serf majority of the English population. Magna Carta was a charter protecting a defined free-men class against the Crown, not a popular liberty document. The narrative layer that transformed it into a document of popular liberty was constructed retrospectively over centuries of political contestation.

5.3 The Parliamentary Crystallisation: De Montfort 1265 and Edward I 1295

Simon de Montfort summoned what is conventionally described as the first English parliament in 1265, not as an expression of popular sovereignty, but in the context of a baronial rebellion against Henry III and a power struggle within the English nobility.[31] De Montfort required a broader coalition of support than the nobility alone could provide. He summoned not only barons and senior clergy but also knights of the shire and representatives of the boroughs. This was not a democratic innovation. It was a tactical expansion of an elite coalition. The knights and burgesses summoned in 1265 were propertied representatives of local economic interests, not delegates of a sovereign people.

Edward I's Model Parliament of 1295 consolidated this framework.[32] The principle *quod omnes tangit ab omnibus approbetur*, 'what touches all must be approved by all', was not, in Edward I's application, a statement of popular sovereignty. It was a mechanism for securing consent from the propertied classes to taxation required for military campaigns, including the campaigns of dominion over Wales and Scotland described in Layer One. The 'all' referenced was the propertied and ordained. The majority of the English population were not included. They were taxed through the decisions of those who were.

England has never had its own parliament, in the sense of a sovereign body constituted from and answerable to the people as a whole. What England has had is an institution through which the propertied and ordained, the precise membership of that group expanding over centuries through sustained popular pressure, have exercised governance in the name of a popular mandate that the sovereignty model of the Crown-in-Parliament has never formally recognised.

5.4 The Act of Settlement 1701: Parliament Asserting Authority Over Hereditary Right

The trajectory toward unlimited parliamentary sovereignty does not begin with the Parliament Act 1911. The structural principle is documented two centuries earlier in the Act of Settlement 1701, an Act of the Parliament of England by which Parliament altered the succession to the throne by statute over the claims of more than fifty Catholic claimants with stronger hereditary right.[33] The succession passed to Sophia, Electress of Hanover, and her Protestant descendants, with the throne ultimately settling on her son George I in 1714, installing the Hanoverian dynasty by parliamentary statute rather than hereditary descent.

The constitutional substance is documented in Parliament's own primary record. The UK Parliament's official statement on the Act describes it as 'a decision of Parliament in 1701 to alter the succession and to choose its own monarch.'[34] This is Parliament naming itself as the body that overrode hereditary right by statute, on the parliamentary record, in language consistent with the unlimited parliamentary sovereignty doctrine the H-FED classification audits. The Act demonstrates the structural principle in operation more than two centuries before the Parliament Act 1911 structurally completed the architecture: Parliament could enact any law, including law altering the highest constitutional matter, the succession to the throne itself, without external constitutional check. The franchise was not yet universal. The sovereignty model was already in place.

[31] De Montfort's Parliament, January 1265 — primary historical record.

[32] Edward I, Model Parliament 1295 — primary historical record.

[33] Act of Settlement 1701 (12 & 13 Will 3 c 2), Parliament of England — primary statutory record.

[34] UK Parliament, 'The Act of Settlement', Living Heritage: Evolution of Parliament — primary parliamentary record. Available at parliament.uk/about/livingheritage/evolutionofparliament/parliamentaryauthority/revolution/overview/actofsettlement/.

5.5 Franchise Without Sovereignty Transfer

The gradual extension of the franchise from the Reform Acts of the nineteenth century through to the Representation of the People Act 1918 and the Equal Franchise Act 1928 produced universal adult suffrage. It did not produce popular sovereignty.[35] At no point in this expansion did the English constitutional tradition formally locate sovereignty in the people. The doctrine of parliamentary sovereignty, as articulated in Dicey's formulation, held that sovereignty resides in the Crown-in-Parliament, not in the electorate.

The electorate's role, in the English constitutional model, is to select those who exercise parliamentary sovereignty on their behalf. Once selected, those representatives exercise sovereignty without constitutional constraint from their electors and without the possibility of those electors recalling or overriding their decisions through any constitutional mechanism. The people vote. The institution governs. The sovereignty never transfers. This is the Elective component of the H-FED: the franchise ritual that confers legitimacy upon the institution without constituting popular self-governance.

Lord Cooper's identification in *obiter* in *MacCormick v Lord Advocate* [1953] of unlimited parliamentary sovereignty as 'a distinctively English principle which has no counterpart in Scottish constitutional law' is not merely a jurisdictional note about Scots law.[36] It is an identification of the absence at the heart of the English constitutional tradition: the absence of the principle that sovereignty resides in the people and is merely loaned, conditionally, to those who govern on their behalf. That principle is not present in the English model. The franchise was extended. The sovereignty principle was never installed.

VI. Layer Three — The Dictatorship Element

6.1 The Self-Indictment

The Dictatorship component of the H-FED classification is the most directly sourced of the three, being grounded in a self-indictment produced by the English constitutional tradition itself. Lord Hailsham — Lord Chancellor, barrister, hereditary peer, lifelong senior practitioner within the Westminster system — coined the term 'elective dictatorship' in his 1976 Richard Dimbleby Lecture and elaborated it in *The Dilemma of Democracy*, published in 1978.[37]

Hailsham's formulation was precise: a parliament returned through democratic elections that then holds unlimited power, with no external constitutional check on its authority. The electorate's role is exhausted at the point of election. Once a parliamentary majority is formed, it can enact any legislation, override any prior commitment, and exercise any power without reference to the electorate that returned it until the next scheduled election. There is no codified constitution against which its acts can be tested. There is no popular sovereignty principle through which the people can override parliamentary decisions. There is no external check of any kind.

Hailsham's 'elective dictatorship' was coined as a critique from within the system, directed at the Labour governments of the 1970s. Its analytical force does not depend on the political context in which it was produced. The structural description is accurate regardless of which party holds the majority. The architecture Hailsham described is continuous. His identification of it is a self-indictment produced by the English constitutional tradition about its own operating character. The franchise selects. The dictatorship governs.

6.2 Structural Completion: The Parliament Act 1911

Before 1911, the English constitutional architecture maintained a degree of internal check in the form of the House of Lords' formal absolute veto over Commons legislation. The two chambers represented

[35] Representation of the People Act 1918; Equal Franchise Act 1928 — primary statutory record.

[36] *MacCormick v Lord Advocate* [1953] SC 396, per Lord President Cooper (*obiter*).

[37] Lord Hailsham (Quintin Hogg), Richard Dimbleby Lecture (BBC 1976); Lord Hailsham, *The Dilemma of Democracy* (Collins 1978).

competing oligarchies, the elected Commons and the hereditary and appointed Lords, whose mutual constraint placed some internal limit on the exercise of unlimited parliamentary power.

The Parliament Act 1911 removed that constraint.[38] Passed in the context of the constitutional crisis generated by the Lords' rejection of Lloyd George's 'People's Budget' of 1909, its effect was to replace the Lords' formal absolute veto with a suspensory power: the Lords could delay, but not permanently block, legislation passed by the Commons. The Act thereby removed the last internal constitutional brake on Commons supremacy.

After 1911, the English constitutional architecture was structurally complete in the terms Hailsham would identify sixty-five years later. The franchise selects. The majority governs without constraint. There is no codified constitution. There is no popular sovereignty principle. The Elective Dictatorship was structurally operational.

6.3 The Absence of Codified Constitution

The absence of a codified constitution in the English tradition is not an accident or an oversight. It is the product of a constitutional history in which sovereignty has always resided in the institution, the Crown-in-Parliament, rather than in an instrument. A codified constitution would require the explicit limitation of parliamentary power by a superior document. In the English tradition, no such superior document exists. Parliament can enact any law, including laws that alter constitutional arrangements. The Human Rights Act 1998, the Scotland Act 1998, the Fixed-term Parliaments Act 2011, all were passed by parliamentary majority and all have been amended or repealed by subsequent parliamentary majority.[39] None of them constrained Parliament in the way that a codified constitution, constitutionally entrenched and judicially enforceable, would have done.

Elective dictatorship is not a failure of the English constitutional tradition. In structural terms, it is its achievement: the construction of a franchise ritual sufficiently convincing to authenticate unlimited parliamentary power as the popular will, without ever transferring that power to the people.

VII. The Synthesis: H-FED Fully Operational by 1911

7.1 The Three Components Combined

The three layers of the H-FED classification combine to produce a precise constitutional taxonomy:

The English state grants the dominant nation the franchise ritual and the psychological wage of national dominance, whilst exercising hierarchical dominion over incorporated subject peoples through the mechanism of that franchise-authenticated parliamentary will, and without at any point transferring genuine sovereignty to either the dominant group or the subject peoples (Herrenvolk-Franchise). The franchise ritual through which the dominant nation authenticates the institution confers legitimacy upon it without transferring sovereignty to the electorate (Elective). The institution that the franchise ritual authenticates exercises unlimited parliamentary power with no constitutional check (Dictatorship).

The H-FED was structurally complete by 1911, when the Parliament Act removed the last internal brake on parliamentary supremacy. The Herrenvolk-Franchise component has been operative since 1169. The Elective component, in its parliamentary form, has been operative since 1265, though its roots lie considerably deeper in the elite governance tradition. The Dictatorship component was structurally completed in 1911. All three have operated simultaneously and continuously from that date.

The paper traces this architecture through a single constitutional lineage. Westminster post-1707 is treated throughout as the continuator of the English state pre-1707, on the analysis established by Professor Robert Black KC at Section 3.4 above: the events of 1707 did not create a new state but extended the English state over Scotland. The constitutional hardware of the English state was not remade in

[38] Parliament Act 1911, 1 & 2 Geo 5 c 13 — primary statutory record.

[39] Human Rights Act 1998; Scotland Act 1998; Fixed-term Parliaments Act 2011; Dissolution and Calling of Parliament Act 2022 — primary statutory record.

1707. It was scaled. The H-FED therefore identifies the architecture of a single, continuously operative constitutional entity, whether that entity is named England pre-1707 or Westminster thereafter.

7.2 The Tolerability Trap

The most persistent challenge to the H-FED classification is not a counter-argument about the architecture but a counter-argument about the experience: the claim that the post-war Keynesian settlement — the National Health Service, full employment policy, the welfare state, collective bargaining — demonstrates that the system has been genuinely democratic in its outcomes, whatever its formal structure.

What the Keynesian settlement altered was not the constitutional hardware of the English state. It altered the experience of living within it. The H-FED architecture — unlimited parliamentary sovereignty, no popular sovereignty principle, the franchise-authenticated parliamentary will operating without constitutional constraint — was identical in 1949 when the NHS was established and in 1979 when the social contract began to be dismantled. What changed between those dates was not the system. It was the policy outputs of those exercising power within the system.

The post-war settlement was a service-level agreement offered by the extraction architecture to prevent the assets from breaking during a period of maximum systemic pressure, post-war mobilisation, organised labour, the credible threat of a socialist alternative. The fact that the same elective dictatorship has since been used to dismantle that settlement, without constitutional constraint, without popular sovereignty to prevent it, is the proof that the architecture never changed. The dismantling does not require a different system. It requires only the same system, exercised by different interests through the same unlimited parliamentary power. The Keynesian cushion was never democracy. It was the mitigation of a system that had never been democratic in the principled sense.

7.3 The Blair Confirmation

Tony Blair's own account of the 1997 devolution referendum provides a primary record confirmation of how the franchise-authenticated system operates in practice. In *A Journey*, Blair describes his reasoning: 'The strategy was clear: to devolve after a hundred years of waiting. The tactic was obvious: get the people to say yes, then the Lords could not say no.'[40]

The people's franchise was deployed as a tactical instrument to neutralise a parliamentary obstacle. This is the H-FED structure in operation at the level of the Prime Minister's own memoir: the Elective component, the popular franchise, used as a mechanism to serve the ends of those exercising parliamentary power, not as an expression of sovereign popular will. The people voted genuinely. The purpose for which their franchise was deployed was set by those exercising the elective dictatorship, not by the people themselves. This is the Elective layer and the Franchise distinction in the same primary record sentence.

VIII. Counter-Arguments and Responses

8.1 The Acquiescence Argument

The most structurally significant challenge to the H-FED classification is the acquiescence argument: that however coercive or illegitimate the origins of the constitutional arrangements, centuries of participation in the franchise ritual constitutes a form of de facto legitimation. Subject peoples have voted, stood for office, served in legislatures, and engaged with constitutional processes. Does not that sustained engagement constitute consent to the architecture?

This argument fails on its own terms. Participation within a franchise system does not constitute consent to the architecture the franchise authenticates. The options presented to voters are options defined and bounded by the system itself. Voters can select between those who will exercise the elective dictatorship differently; they cannot, through the franchise ritual, alter the fact that whoever exercises it does so through a system of unlimited parliamentary sovereignty in which their vote does not constrain the

[40] Tony Blair, *A Journey* (Hutchinson 2010) 251.

exercise of power between elections. The franchise is the interface. The interface does not alter the hardware.

The 2018 House of Commons motion simultaneously affirming that the Scottish people are sovereign and overriding Scotland's expressed constitutional preferences provides the clearest recent primary evidence. The acknowledgement and the violation were not sequential. They were simultaneous.[41] The franchise ritual was being performed at the same moment the sovereignty it purported to acknowledge was being overridden. That is not a malfunction. It is the H-FED operating as designed.

8.2 The Evolving Democracy Argument

A second counter-argument holds that the English constitutional system has evolved progressively in a democratic direction, from Magna Carta through the Reform Acts to universal suffrage to the Human Rights Act, and that this trajectory demonstrates genuine democratic character. A related version of this argument points to moments of popular mobilisation — Chartism, the 1832 Reform Act crisis, the rise of organised labour — and argues that these demonstrate popular sovereignty operating in practice, whatever the formal constitutional doctrine says.

This paper accepts the factual premises: the franchise has expanded, formal rights have been extended, and popular mobilisation has at times produced significant shifts in the outputs of parliamentary government. The question is whether this evolution altered the constitutional hardware or merely the range of persons who participate in operating it and the content of the policies it has produced. The sovereignty model has not changed. The Crown-in-Parliament has always been sovereign. Popular pressure altered outputs; it did not alter the sovereignty architecture through which those outputs are produced. What has changed is the composition of the electorate that selects those who exercise that sovereignty, and the political constraints on how that sovereignty has at various points been exercised. This is meaningful, the expansion of the franchise and the pressure of mobilised publics matter enormously to the lived experience of those included in it. But it is not democracy in the principled sense. It is an expanding franchise operating within a system that retains the structural principle that sovereignty resides in the institution, not the people.

8.3 The Comparative Argument

A third counter-argument holds that the English constitutional system compares favourably with the majority of existing political systems and satisfies the minimal criteria for functional democracy in comparative political science. The H-FED classification is not a comparative ranking but a structural taxonomy. The question is not whether the English state is better or worse than other political systems by some metric. The question is what the English state structurally is. The answer the three-layer analysis produces is precise and evidentially grounded: it is a Herrenvolk-Franchise Elective Dictatorship.

8.4 The Tolerable Outcomes Argument

A counter-argument holds that the H-FED classification must be qualified by reference to material outcomes the system has produced: the post-war welfare state, the expansion of labour rights, public education. The counter-receipt is structural. The Parliament Act 1911 is the same constitutional instrument regardless of whether a Labour government is using it to found the NHS in 1948 or a Conservative government is using it to abolish trade union rights in 1984. The architecture of unlimited parliamentary sovereignty does not vary with the policies enacted through it. A dictatorship that produces beneficial outcomes is still, structurally, a dictatorship. The quality of the outputs does not determine what the structure is.

[41] Hansard, HC Deb 4 July 2018, vol 644. House of Commons, motion affirming Scottish popular sovereignty, 2018 — primary parliamentary record. European Union (Withdrawal) Act 2018, enacted without constitutional mechanism addressing Scotland's expressed 62% Remain vote.

8.5 Permissions Not Protections: The Statutory Rights Argument

A further counter-argument holds that the Human Rights Act 1998, the Judicial Review process, the Equality Act 2010, and comparable statutory instruments operate as constitutional safeguards that constrain the exercise of parliamentary power, qualifying the Dictatorship component of the classification.

This argument misidentifies the constitutional character of these instruments. The Human Rights Act, Judicial Review, and statutory equality protections are not constitutional checks on parliamentary sovereignty, they are statutes passed by a franchise-authenticated parliament and capable of amendment or repeal by any subsequent parliamentary majority. They function as the state's published terms of conduct, subject to change without entrenched constraint, rather than as superior instruments against which the state's acts can be tested. The successive post-2016 attempts to replace, restrict, or redefine the Human Rights Act illustrate this directly: an instrument that can be replaced or restricted by simple majority is not a constitutional constraint on the majority that can replace or restrict it. These are permissions the H-FED grants. They are not protections against it. The distinction matters because it names precisely what is and is not present in the English constitutional architecture: statutory rights regimes, yes; codified constitutional constraint on parliamentary power, no.

8.6 The Scottish Case and Alternative Sovereignty Standards

The classification of Westminster as H-FED does not depend on the Scottish case. It is independently verifiable from the English constitutional record alone. What the Scottish case adds is a demonstration of the classification's implications in practice: a constitutional tradition built on popular sovereignty, grounded in instruments that pre-date Westminster's parliamentary claim, never voluntarily submitted, never legitimately extinguished, and expressly preserved by the Treaty Westminster claims as the foundation of its authority over Scotland.

The taxonomy identifies that an alternative sovereignty standard exists, is documented in the primary record, was not legitimately displaced, and remains available as the governing constitutional standard for claims arising from Scottish sovereignty. The Scots instruments — the Claim of Right 1689, the Act *salvo jure cujuslibet* 1663, and the principle articulated in Lord Cooper's *obiter* in *MacCormick v Lord Advocate* [1953] — are strongly supported in judicial reasoning even where not binding as precedent. The structural tension is identified. Its resolution lies in the application of the sovereignty principle that was never legitimately extinguished.

IX. Constitutional Implications

9.1 The Narrative Flip

The taxonomic effect of the H-FED classification is to invert the default framing of constitutional debates conducted within the English constitutional tradition. Within that tradition, the relevant constitutional question has been: by what mechanism can subject peoples satisfy the procedural requirements for constitutional change within the Westminster system? The answer, consistently produced by that system's own institutions and legal advisers, is that Westminster's permission is required and must be sought through Westminster's processes.

The H-FED classification changes the question entirely. It does not ask whether subject peoples can satisfy an H-FED's procedural requirements. It asks: by what right does a Herrenvolk-Franchise Elective Dictatorship hold procedural authority over sovereign peoples in the first place?

That question is structurally different from anything the Westminster institutional framework is constituted to answer. Its institutions derive their authority from the same constitutional architecture the classification indicts. They cannot assess whether that architecture has legitimate authority over subject peoples without assuming, in the very act of assessment, the legitimacy of the structure doing the assessing. That is the closed loop the H-FED classification exits.

9.2 Contemporary Confirmation: The Post-2016 Constitutional Record

The H-FED classification is not merely a historical taxonomy. The post-2016 constitutional record of the English state provides contemporaneous primary evidence of all three layers operating simultaneously.

The Dictatorship layer confirmed: the 2022 Supreme Court ruling. In Reference by the Lord Advocate [2022] UKSC 31, the Supreme Court ruled that the Scottish Parliament lacked legislative competence to hold an independence referendum without Westminster consent, on the grounds that such legislation related to the reserved matter of 'the Union of Scotland and England' and 'the sovereignty of the United Kingdom Parliament.'[42] The ruling explicitly confirmed Westminster parliamentary sovereignty as the governing constitutional principle, a parliament of unlimited power, unrestricted by any popular sovereignty principle, whose authority extends without constitutional constraint. This is the Dictatorship layer confirmed at the highest judicial level from the English state's own institutional record.

The Herrenvolk-Franchise layer confirmed: the Brexit override. The European Union (Withdrawal) Act 2018 was enacted without constitutional mechanism addressing the fact that majorities in incorporated nations had expressed preferences that contradicted the legislation's direction.[43] This is the Herrenvolk-Franchise mechanism in direct contemporary operation: the dominant nation's franchise-authenticated parliamentary will determining the constitutional fate of incorporated peoples without constitutional constraint or recourse. The franchise was cast. The franchise authenticated the override. The subject peoples had no constitutional recourse.

The Elective layer confirmed: the Sewel Convention record. The Sewel Convention was incorporated into statute by the Scotland Act 2016 and the Wales Act 2017.[44] Notwithstanding its statutory expression, Westminster overrode the Convention on multiple occasions following 2016, including through the European Union (Withdrawal) Act 2018, the United Kingdom Internal Market Act 2020, and the Retained EU Law (Revocation and Reform) Act 2023. The UK Supreme Court confirmed in Miller [2017] that the Convention is not legally enforceable.[45] The Elective component is confirmed: the franchise selects; the institution, once selected, exercises sovereignty without the constraint of any commitment, including those legislatively expressed, when those commitments conflict with the exercise of its unlimited power.

The Internal Market Act 2020: the state indicting itself. The United Kingdom Internal Market Act 2020 was introduced by the UK Government in the explicit knowledge, acknowledged by its own legal officers, that certain of its provisions were incompatible with international treaty obligations under the Withdrawal Agreement.[46] A state that legislates in acknowledged breach of its own treaty obligations, and defends that legislation through the doctrine of parliamentary sovereignty, is a state that has confirmed, from within its own parliamentary record, that no external or treaty-based constraint effectively limits its parliamentary power. This is the Dictatorship element naming itself through its own conduct.

These four primary record confirmations establish that the H-FED classification is not an historical artefact. It is the currently operative constitutional architecture of the English state.

9.3 The Scope of the Classification

The H-FED classification is a comparative political science taxonomy, not a colonial law argument. It does not require proving any territory's status as a non-self-governing territory under UN resolutions. It does not depend on the specific constitutional instruments of any incorporated territory.

The classification asks a prior and structurally different question: whether the constitutional framework within which any sovereignty claim must be evaluated has legitimate authority to evaluate it. The answer

[42] *Reference by the Lord Advocate and the Advocate General for Scotland* [2022] UKSC 31.

[43] European Union (Withdrawal) Act 2018 — primary statutory record.

[44] Scotland Act 2016, s 2; Wales Act 2017, s 2 — primary statutory record.

[45] *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5.

[46] United Kingdom Internal Market Act 2020; statements of Rt Hon Brandon Lewis MP (Secretary of State for Northern Ireland) to the House of Commons, 8 September 2020: 'yes, this does break international law in a very specific and limited way' — Hansard HC Deb 8 September 2020, col 509.

the three components produce is that it does not. That conclusion is reached through the mechanics of the English state's own record, its self-indictments, its structural instruments, its own scholars' analyses, and its own post-2016 conduct. It stands or falls on the quality of that evidence, independently of any claims advanced by or on behalf of incorporated territories.

X. Conclusion

This paper has proposed and defended a structural constitutional classification of the English state: the Herrenvolk-Franchise Elective Dictatorship. The classification is built from three independently verifiable layers, each grounded in primary evidence. Two of the three layers are sourced from self-indictments produced within the English constitutional tradition itself.

The first layer, Herrenvolk-Franchise, identifies the structural principle of the English state as the maintenance of a franchise ritual for the dominant nation, combined with the psychological wage of national dominance as a lateral buffer against vertical challenge to the extraction architecture, whilst exercising hierarchical dominion over incorporated subject peoples through the mechanism of that franchise-authenticated parliamentary will. This layer extends van den Berghe's herrenvolk-democracy concept in two directions: from racial to national dominion, and from democracy to franchise, the latter extension being required by the primary record, which establishes that even the dominant nation held not sovereignty but the ritual of selection. This layer has been operative since 1169.

The second layer, the Elective element, identifies the English parliamentary tradition not as a people's instrument but as an unbroken record of elite corporate capture, predating the formal parliamentary tradition and crystallised in institutional form from 1265. The franchise has expanded. The sovereignty model has not changed.

The third layer, the Dictatorship element, is sourced from Lord Hailsham's 1976 self-indictment of the Westminster system and is structurally completed by the Parliament Act 1911. Unlimited parliamentary sovereignty, franchise-authenticated but without popular sovereignty as its foundation, is the architecture that Hailsham named and that 1911 structurally finalised.

Together, these three components produce a classification that has been fully operative since 1911 and whose confirmation is available from the English state's own primary record, confirmed in the post-2016 constitutional events examined in Section IX.

The constitutional implications of this classification are significant. The H-FED classification removes the procedural authority of the dominant system's institutions to assess claims that arise against the legitimacy of that system itself. It does not resolve those claims. It reframes the question within which they must be assessed: not whether subject peoples can satisfy the H-FED's procedural requirements, but by what right the H-FED holds procedural authority over sovereign peoples in the first place.

That question has no satisfactory answer within the constitutional framework the classification indicts.

Bibliography

Primary Legislation and Constitutional Instruments

Act of Settlement 1701, 12 & 13 Will 3 c 2 (Parliament of England) Alien Act 1705 (Parliament of England)

Anglo-Saxon Witenagemot — primary chronicle record

Dissolution and Calling of Parliament Act 2022

Equal Franchise Act 1928

European Union (Withdrawal) Act 2018

Fixed-term Parliaments Act 2011

Human Rights Act 1998

Laws in Wales Acts 1535–1542 (Parliament of England)

Magna Carta 1215

Ordinance for the Union of England and Scotland 1654

Parliament Act 1911, 1 & 2 Geo 5 c 13

Representation of the People Act 1918

Rescissory Act 1661 (Parliament of Scotland)

Retained EU Law (Revocation and Reform) Act 2023

Scotland Act 1998; Scotland Act 2016

Statute of Rhuddlan 1284

Succession to the Crown Act 1544 (Parliament of England)

Tender of Union 1652

Treaty of Birgham 1290

Treaty of Edinburgh-Northampton 1328

Treaty of Montgomery 1267

United Kingdom Internal Market Act 2020

Wales Act 2017

Primary Parliamentary Record

Rt Hon Brandon Lewis MP (Secretary of State for Northern Ireland), Hansard HC Deb 8 September 2020, col 509

Primary Case Law

MacCormick v Lord Advocate [1953] SC 396

R (Jackson) v Attorney General [2005] UKHL 56; [2006] 1 AC 262

R (Miller) v Secretary of State for Exiting the European Union [2017] UKSC 5

Reference by the Lord Advocate and the Advocate General for Scotland [2022] UKSC 31

Primary Parliamentary and Archive Records

Records of the Parliaments of Scotland to 1707, K M Brown et al (eds) (St Andrews 2007–2026)

House of Commons Library, Enclosure Acts briefing — 5,200 individual Acts 1604–1914

Primary Academic, Legal, and Published Sources

Atwood W (Crown-appointed legal writer), *The Superiority and Direct Dominion of the Imperial Crown of England Over the Crown and Kingdom of Scotland* (London 1704) — available via Early English Books Online, British Library

Bacon F, *Three Speeches Concerning the Post-Nati Naturalization of the Scotch in England, Union of the Lawes of the Kingdomes of England and Scotland* (as Solicitor General) — EEBO ref: A71317.0001.001, University of Michigan

Blair T, *A Journey* (Hutchinson 2010)

Black R KC FRSE, '*For England, Nothing Changed*' (paper, 'The Next Steps for Scottish Sovereignty' conference, Dunfermline, 17 May 2025) https://liberation.scot/coms/June18-2025/For-England-Nothing-Changed-Professor-R.Black-KC.pdf

Crawford J SC and Boyle A, 'Opinion: Referendum on the Independence of Scotland — International Law Aspects', Annex A to *Scotland Analysis: Devolution and the Implications of Scottish Independence* (UK Government, February 2013)

Defoe D, Letters to Robert Harley, 1706, in *Manuscripts of His Grace the Duke of Portland*, Historical Manuscripts Commission Report, Vol IV (London, HM Stationery Office 1897); *The Letters of Daniel Defoe*, ed G H Healey (Oxford, Clarendon Press 1955)

Dicey A V, *Introduction to the Study of the Law of the Constitution* (1st edn, Macmillan 1885)

Hailsham Lord (Quintin Hogg), Richard Dimbleby Lecture (BBC 1976)

Hailsham Lord (Quintin Hogg), *The Dilemma of Democracy* (Collins 1978)

Lockhart G (of Carnwath), *Memoirs Concerning the Affairs of Scotland from Queen Anne's Accession to the Throne* (London 1714)

Secondary Academic Scholarship

Campbell I CMG, ' "The Union and the law" revisited' (2014) *Journal of the Law Society of Scotland* (Vol 59, Issue 07) https://www.lawscot.org.uk/members/journal/issues/vol-59-issue-07/the-union-and-the-law-revisited/

Carty A and Clyde M, 'Scotland and England from a union of parliaments to two independent kingdoms' (2014) 2(2) *London Review of International Law* 299

Fredrickson G M, *White Supremacy: A Comparative Study in American and South African History* (Oxford University Press 1981)

Hobson J A, *Imperialism: A Study* (James Nisbet & Co 1902)

Levack B P, *The Formation of the British State: England, Scotland, and the Union 1603–1707* (Oxford: Clarendon Press 1987)

Neeson J M, *Commoners: Common Right, Enclosure and Social Change in England, 1700–1820* (Cambridge University Press 1993) van den Berghe P L, *Race and Racism: A Comparative Perspective* (John Wiley & Sons 1967)

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